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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA
10

11 **LASHON SALES,**

12 Plaintiff,

13 v.
14

15 **DEBBIE ASUNCION, ET AL.**

16 Defendants.
17

Case No. 2:18-cv-03606-RGK-GJS

**STIPULATED PROTECTIVE
ORDER¹**

18 1. A. PURPOSES AND LIMITATIONS

19 Discovery in this action is likely to involve production of confidential,
20 proprietary or private information for which special protection from public
21 disclosure and from use for any purpose other than prosecuting this litigation may
22 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
23 enter the following Stipulated Protective Order. The parties acknowledge that this
24 Order does not confer blanket protections on all disclosures or responses to
25 discovery and that the protection it affords from public disclosure and use extends
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27 _____
28 ¹ This Stipulated Protective Order is substantially based on the model
protective order provided under Magistrate Judge Gail J. Standish's Procedures.

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles.

3 B. GOOD CAUSE STATEMENT

4 This action is likely to involve production of confidential, proprietary, or
5 private information, including records of the California Department of Corrections
6 and Rehabilitation (“CDCR”) and California State Prison, Los Angeles County
7 (“LAC”), that could threaten the safety and security of individuals for which special
8 protection from public disclosure and from use for any purpose other than
9 prosecution of this action is warranted. Such confidential and proprietary materials
10 and information consist of, among other things, information that has been
11 maintained by CDCR, LAC, or another CDCR institution, as confidential,
12 information that concerns or relates to CDCR processes, operations, or
13 investigations, disclosure of which may threaten the safety and security of CDCR
14 prisons, staff, inmates, the public, and the Parties, information otherwise generally
15 unavailable to the public, and information which may be privileged or otherwise
16 protected from disclosure under state or federal statutes, court rules, case decisions,
17 or common law. Accordingly, to expedite the flow of information, to facilitate the
18 prompt resolution of disputes over confidentiality of discovery materials, to
19 adequately protect information the parties are entitled to keep confidential, to
20 ensure that the parties are permitted reasonable necessary uses of such material in
21 preparation for and in the conduct of trial, to address their handling at the end of the
22 litigation, and serve the ends of justice, a protective order for such information is
23 justified in this matter. It is the intent of the parties that information will not be
24 designated as confidential for tactical reasons and that nothing be so designated
25 without a good faith belief that it has been maintained in a confidential, non-public
26 manner, and there is good cause why it should not be part of the public record of
27 this case.

1 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

2 The parties further acknowledge, as set forth in Section 12.3, below, that
3 this Stipulated Protective Order does not entitle them to file confidential
4 information under seal; Local Civil Rule 79-5 sets forth the procedures that must be
5 followed and the standards that will be applied when a party seeks permission from
6 the court to file material under seal.

7 There is a strong presumption that the public has a right of access to judicial
8 proceedings and records in civil cases. In connection with non-dispositive motions,
9 good cause must be shown to support a filing under seal. *See Kamakana v. City*
10 *and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen.*
11 *Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony*
12 *Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective
13 orders require good cause showing), and a specific showing of good cause or
14 compelling reasons with proper evidentiary support and legal justification, must be
15 made with respect to Protected Material that a party seeks to file under seal. The
16 parties' mere designation of Disclosure or Discovery Material as
17 CONFIDENTIAL—ATTORNEYS' EYES ONLY does not—without the
18 submission of competent evidence by declaration, establishing that the material
19 sought to be filed under seal qualifies as confidential, privileged, or otherwise
20 protectable—constitute good cause.

21 Further, if a party requests sealing related to a dispositive motion or trial,
22 then compelling reasons, not only good cause, for the sealing must be shown, and
23 the relief sought shall be narrowly tailored to serve the specific interest to be
24 protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir.
25 2010). For each item or type of information, document, or thing sought to be filed
26 or introduced under seal in connection with a dispositive motion or trial, the party
27 seeking protection must articulate compelling reasons, supported by specific facts
28 and legal justification, for the requested sealing order. Again, competent evidence

1 supporting the application to file documents under seal must be provided by
2 declaration.

3 Any document that is not confidential, privileged, or otherwise protectable in
4 its entirety will not be filed under seal if the confidential portions can be redacted.
5 If documents can be redacted, then a redacted version for public viewing, omitting
6 only the confidential, privileged, or otherwise protectable portions of the document,
7 shall be filed. Any application that seeks to file documents under seal in their
8 entirety should include an explanation of why redaction is not feasible.

9 **2. DEFINITIONS**

10 2.1 Action: *Lashon Sales v. Debbie Asuncion, et al.*, U.S. District Court,
11 C.D. California, Case No. 2:18-cv-03606-RGK-GJS.

12 2.2 Challenging Party: a Party or Non-Party that challenges the
13 designation of information or items under this Order.

14 2.3 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” Information or
15 Items: information (regardless of how it is generated, stored or maintained) or
16 tangible things that qualify for protection under Federal Rule of Civil Procedure
17 26(c), and as specified above in the Good Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.5 Designating Party: a Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

23 2.6 Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced
26 or generated in disclosures or responses to discovery in this matter.

27 2.7 Expert: a person with specialized knowledge or experience in a matter
28 pertinent to the litigation who has been retained by a Party or its counsel to serve as

1 an expert witness or as a consultant in this Action.

2 2.8 House Counsel: attorneys who are employees of a party to this Action.
3 House Counsel does not include Outside Counsel of Record or any other outside
4 counsel.

5 2.9 Non-Party: any natural person, partnership, corporation, association or
6 other legal entity not named as a Party to this action.

7 2.10 Outside Counsel of Record: attorneys who are not employees of a
8 party to this Action but are retained to represent or advise a party to this Action and
9 have appeared in this Action on behalf of that party or are affiliated with a law firm
10 that has appeared on behalf of that party, and includes support staff.

11 2.11 Party: any party to this Action, including all of its officers, directors,
12 employees, consultants, retained experts, and Outside Counsel of Record (and their
13 support staffs).

14 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.

16 2.13 Professional Vendors: persons or entities that provide litigation
17 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 2.14 Protected Material: any Disclosure or Discovery Material that is
21 designated as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

22 2.15 Receiving Party: a Party that receives Disclosure or Discovery
23 Material from a Producing Party.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
28

1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the
4 trial judge. This Order does not govern the use of Protected Material at trial.

5 4. DURATION

6 FINAL DISPOSITION of the action is defined as the conclusion of any
7 appellate proceedings, or, if no appeal is taken, when the time for filing of an
8 appeal has run. Except as set forth below, the terms of this protective order apply
9 through FINAL DISPOSITION of the action. The parties may stipulate that they
10 will be contractually bound by the terms of this agreement beyond FINAL
11 DISPOSITION, but will have to file a separate action for enforcement of the
12 agreement once all proceedings in this case are complete.

13 Once a case proceeds to trial, information that was designated as
14 CONFIDENTIAL—ATTORNEYS’ EYES ONLY or maintained pursuant to this
15 protective order used or introduced as an exhibit at trial becomes public and will be
16 presumptively available to all members of the public, including the press, unless
17 compelling reasons supported by specific factual findings to proceed otherwise are
18 made to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81
19 (distinguishing “good cause” showing for sealing documents produced in discovery
20 from “compelling reasons” standard when merits-related documents are part of
21 court record). Accordingly, for such materials, the terms of this protective order do
22 not extend beyond the commencement of the trial.

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.

25 Each Party or Non-Party that designates information or items for protection under
26 this Order must take care to limit any such designation to specific material that
27 qualifies under the appropriate standards. The Designating Party must designate for
28 protection only those parts of material, documents, items or oral or written

1 communications that qualify so that other portions of the material, documents,
2 items or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Order.

4 Mass, indiscriminate or routinized designations are prohibited. Designations
5 that are shown to be clearly unjustified or that have been made for an improper
6 purpose (e.g., to unnecessarily encumber the case development process or to
7 impose unnecessary expenses and burdens on other parties) may expose the
8 Designating Party to sanctions.

9 If it comes to a Designating Party's attention that information or items that it
10 designated for protection do not qualify for protection, that Designating Party must
11 promptly notify all other Parties that it is withdrawing the inapplicable designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in
13 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
14 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
15 under this Order must be clearly so designated before the material is disclosed or
16 produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic
19 documents, but excluding transcripts of depositions or other pretrial or trial
20 proceedings), that the Producing Party affix at a minimum, the legend
21 "CONFIDENTIAL—ATTORNEYS' EYES ONLY" (hereinafter
22 "CONFIDENTIAL—ATTORNEYS' EYES ONLY legend"), to each page that
23 contains protected material. If only a portion of the material on a page qualifies for
24 protection, the Producing Party also must clearly identify the protected portion(s)
25 (e.g., by making appropriate markings in the margins).

26 A Party or Non-Party that makes original documents available for inspection
27 need not designate them for protection until after the inspecting Party has indicated
28 which documents it would like copied and produced. During the inspection and

1 before the designation, all of the material made available for inspection shall be
2 deemed “CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” After the inspecting
3 Party has identified the documents it wants copied and produced, the Producing
4 Party must determine which documents, or portions thereof, qualify for protection
5 under this Order. Then, before producing the specified documents, the Producing
6 Party must affix the “CONFIDENTIAL—ATTORNEYS’ EYES ONLY legend” to
7 each page that contains Protected Material. If only a portion of the material on a
8 page qualifies for protection, the Producing Party also must clearly identify the
9 protected portion(s) (e.g., by making appropriate markings in the margins).

10 (b) for testimony given in depositions that the Designating Party
11 identifies the Disclosure or Discovery Material on the record, before the close of
12 the deposition all protected testimony.

13 (c) for information produced in some form other than documentary and
14 for any other tangible items, that the Producing Party affix in a prominent place on
15 the exterior of the container or containers in which the information is stored the
16 legend “CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” If only a portion or
17 portions of the information warrants protection, the Producing Party, to the extent
18 practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive
21 the Designating Party’s right to secure protection under this Order for such
22 material. Upon timely correction of a designation, the Receiving Party must make
23 reasonable efforts to assure that the material is treated in accordance with the
24 provisions of this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
27 designation of confidentiality at any time that is consistent with the Court’s
28 Scheduling Order.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Frivolous challenges, and those made for an improper
5 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
6 parties) may expose the Challenging Party to sanctions. Unless the Designating
7 Party has waived or withdrawn the confidentiality designation, all parties shall
8 continue to afford the material in question the level of protection to which it is
9 entitled under the Producing Party's designation until the Court rules on the
10 challenge.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this
14 Action only for prosecuting, defending or attempting to settle this Action. Such
15 Protected Material may be disclosed only to the categories of persons and under the
16 conditions described in this Order. When the Action has been terminated, a
17 Receiving Party must comply with the provisions of section 13 below (FINAL
18 DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a
20 location and in a secure manner that ensures that access is limited to the persons
21 authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL—ATTORNEYS' EYES ONLY"
23 Information or Items. Unless otherwise ordered by the court or permitted in writing
24 by the Designating Party, a Receiving Party may disclose any information or item
25 designated "CONFIDENTIAL—ATTORNEYS' EYES ONLY" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this Action, as
27 well as employees of said Outside Counsel of Record to whom it is reasonably
28 necessary to disclose the information for this Action;

1 (b) the officers, directors, and employees (including House Counsel) of
2 the Receiving Party to whom disclosure is reasonably necessary for this Action;

3 (c) Experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this Action and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) the court and its personnel;

7 (e) court reporters and their staff;

8 (f) professional jury or trial consultants, mock jurors, and Professional
9 Vendors to whom disclosure is reasonably necessary for this Action and who have
10 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (g) the author or recipient of a document containing the information or a
12 custodian or other person who otherwise possessed or knew the information;

13 (h) during their depositions, witnesses, and attorneys for witnesses, in the
14 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
15 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they
16 will not be permitted to keep any confidential information unless they sign the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
18 agreed by the Designating Party or ordered by the court. Pages of transcribed
19 deposition testimony or exhibits to depositions that reveal Protected Material may
20 be separately bound by the court reporter and may not be disclosed to anyone
21 except as permitted under this Stipulated Protective Order; and

22 (i) any mediator or settlement officer, and their supporting personnel,
23 mutually agreed upon by any of the parties engaged in settlement discussions.

24 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
25 IN OTHER LITIGATION

26 If a Party is served with a subpoena or a court order issued in other litigation
27 that compels disclosure of any information or items designated in this Action as
28 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification
2 shall include a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order
4 to issue in the other litigation that some or all of the material covered by the
5 subpoena or order is subject to this Protective Order. Such notification shall
6 include a copy of this Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be
8 pursued by the Designating Party whose Protected Material may be affected.

9 If the Designating Party timely seeks a protective order, the Party served with
10 the subpoena or court order shall not produce any information designated in this
11 action as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” before a
12 determination by the court from which the subpoena or order issued, unless the
13 Party has obtained the Designating Party’s permission. The Designating Party shall
14 bear the burden and expense of seeking protection in that court of its confidential
15 material and nothing in these provisions should be construed as authorizing or
16 encouraging a Receiving Party in this Action to disobey a lawful directive from
17 another court.

18 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
19 PRODUCED IN THIS LITIGATION

20 (a) The terms of this Order are applicable to information produced by a
21 Non-Party in this Action and designated as “CONFIDENTIAL—ATTORNEYS’
22 EYES ONLY.” Such information produced by Non-Parties in connection with this
23 litigation is protected by the remedies and relief provided by this Order. Nothing in
24 these provisions should be construed as prohibiting a Non-Party from seeking
25 additional protections.

26 (b) In the event that a Party is required, by a valid discovery request, to
27 produce a Non-Party’s confidential information in its possession, and the Party is
28 subject to an agreement with the Non-Party not to produce the Non-Party’s

1 confidential information, then the Party shall:

2 (1) promptly notify in writing the Requesting Party and the Non-Party
3 that some or all of the information requested is subject to a confidentiality
4 agreement with a Non-Party;

5 (2) promptly provide the Non-Party with a copy of the Stipulated
6 Protective Order in this Action, the relevant discovery request(s), and a reasonably
7 specific description of the information requested; and

8 (3) make the information requested available for inspection by the
9 Non-Party, if requested.

10 (c) If the Non-Party fails to seek a protective order from this court within
11 14 days of receiving the notice and accompanying information, the Receiving Party
12 may produce the Non-Party's confidential information responsive to the discovery
13 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
14 not produce any information in its possession or control that is subject to the
15 confidentiality agreement with the Non-Party before a determination by the court.
16 Absent a court order to the contrary, the Non-Party shall bear the burden and
17 expense of seeking protection in this court of its Protected Material.

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
20 Protected Material to any person or in any circumstance not authorized under this
21 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
22 writing the Designating Party of the unauthorized disclosures, (b) use its best
23 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
24 person or persons to whom unauthorized disclosures were made of all the terms of
25 this Order, and (d) request such person or persons to execute the "Acknowledgment
26 and Agreement to Be Bound" that is attached hereto as Exhibit A.
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1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other
5 protection, the obligations of the Receiving Parties are those set forth in Federal
6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
7 whatever procedure may be established in an e-discovery order that provides for
8 production without prior privilege review. Pursuant to Federal Rule of Evidence
9 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
10 of a communication or information covered by the attorney-client privilege or work
11 product protection, the parties may incorporate their agreement in the stipulated
12 protective order submitted to the court.

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
15 person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order, no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in
19 this Stipulated Protective Order. Similarly, no Party waives any right to object on
20 any ground to use in evidence of any of the material covered by this Protective
21 Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Local Civil Rule 79-5. Protected Material
24 may only be filed under seal pursuant to a court order authorizing the sealing of the
25 specific Protected Material at issue. If a Party's request to file Protected Material
26 under seal is denied by the court, then the Receiving Party may file the information
27 in the public record unless otherwise instructed by the court.
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13. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: September 13, 2019

/S/ DeWitt Lacy
Attorneys for Plaintiff

1 DATED: September 13, 2019

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3 /S/ Jennifer. J. Nygaard
4 Attorneys for Defendant

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6 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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8 DATED: September 17, 2019

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GAIL J. STANDISH
UNITED STATES MAGISTRATE JUDGE

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Central District of California
8 on [date] in the case of *Lashon Sales v. Debbie Asuncion*, et al., Case No. 2:18-cv-
9 03606-RGK-GJS I agree to comply with and to be bound by all the terms of this
10 Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item
13 that is subject to this Stipulated Protective Order to any person or entity except in
14 strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Central District of California for enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of
18 this action. I hereby appoint _____ [print or type full
19 name] of _____ [print or type full
20 address and telephone number] as my California agent for service of process in
21 connection with this action or any proceedings related to enforcement of this
22 Stipulated Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____